

Report on the

Alabama Board of Examiners of Assisted Living Administrators

Montgomery, Alabama



Department of Examiners of Public Accounts

50 North Ripley Street, Room 3201
P.O. Box 302251
Montgomery, Alabama 36130-2251
www.examiners.alabama.gov

Ronald L. Jones, Chief Examiner

State of Alabama
Department of
Examiners of Public Accounts

Telephone (334) 242-9200
FAX (334) 242-1775

Ronald L. Jones
Chief Examiner

Mailing Address:
P.O. Box 302251
Montgomery, AL 36130-2251

Location:
Gordon Persons Building
50 North Ripley Street, Room 3201
Montgomery, AL 36104-3833

August 24, 2011

Senator Paul Bussman
Chairman, Sunset Committee
Alabama State House
Montgomery, AL 36130

Dear Senator Bussman,

This report was prepared to provide information for use by the Sunset Committee in conducting its review and evaluation of the operations of the **Alabama Board of Examiners of Assisted Living Administrators** in accordance with the *Code of Alabama 1975*, Section 41-20-9.

The report contains unaudited information obtained from the management, staff, and records of the **Alabama Board of Examiners of Assisted Living Administrators**, in addition to information obtained from other sources.

Please contact me if you have any questions concerning this report.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald L. Jones", written in a cursive style.

Ronald L. Jones
Chief Examiner

Examiner
Calvin J. Cooper

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PROFILE

Purpose/Authority

The Alabama Board of Examiners of Assisted Living Administrators licenses and regulates the administrators of assisted living facilities. The board does not license or regulate assisted living facilities. The board operates under the authority of the *Code of Alabama 1975*, Sections 34-2A-1 through 34-2A-16.

Characteristics	
Members and Selection	<p>Nine (9) members appointed by the governor.</p> <ul style="list-style-type: none">• Five (5) assisted living administrator members selected from a list of three nominees for each position provided by the Assisted Living Association of Alabama.• One (1) nursing home administrator member selected from a list of three nominees provided by the Alabama Nursing Home Association.• One (1) physician member selected from a list of three nominees provided by the Medical Association of the State of Alabama.• Two (2) consumer members <p><i>Code of Alabama 1975</i>, Section 34-2A-3(a)</p>
Terms	<ul style="list-style-type: none">• Members serve three-year staggered terms.• Members cannot serve more than two consecutive terms of office.• Members can continue to serve until a successor is appointed. <p><i>Code of Alabama</i>, Section 34-2A-3(e)</p>
Qualifications	<ul style="list-style-type: none">• United States citizen• Alabama resident• The physician member must actively practice in the care of chronically ill and infirmed aged patients.• The nursing home administrator member must work in the same or a contiguous facility that manages assisted living beds.• One consumer member must be 65 or older• No consumer member, spouse or immediate family member may be licensed by the board or employed in the assisted living profession <p><i>Code of Alabama</i>, Section 34-2A-3(a)(d)</p>

Racial Representation	No statutory requirement One black member
Geographical Representation	No statutory requirement
Consumer Representation	Two consumer members required by law <i>Code of Alabama</i> , Section 34-2A-3(b)
Other Representation	The membership of the board shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of the state. <i>Code of Alabama</i> , Section 34-2A-3(a)
Compensation	\$100 per day set by the board (max. allowed by law) Travel expense allowances at the same rate as state employees <i>Code of Alabama</i> , Section 34-2A-3(h)
Operations	
Administrator	Amy Findley, Executive Director Salary \$25,932.96 annually The board selects and employs the executive director, who serves at the pleasure of the board. Note: The executive director position is part-time. The current executive director is also an employee of the Alabama Assisted Living Association. <i>Code of Alabama</i> , Section 34-2A-3(j)
Location & Office Hours	Assisted Living Association Building 5921 Carmichael Road Montgomery, AL 36130 Office Hours Monday – Friday 8:00-12:00

Examinations	<p>The original examination was developed by Savage Consulting, Inc., a professional testing service in Tuscaloosa, Alabama and has been periodically amended. Examinations are administered on a quarterly basis at the board’s office in Montgomery and are graded by the executive director. The pass/ fail results for each category of examination are as follows:</p> <table><tr><th colspan="4">Category I Examination Pass/Fail Rates</th></tr><tr><th>Year</th><th>Applicants</th><th>Passed</th><th>Failed</th></tr><tr><td>2007</td><td>38</td><td>36</td><td>2</td></tr><tr><td>2008</td><td>45</td><td>42</td><td>3</td></tr><tr><td>2009</td><td>20</td><td>18</td><td>2</td></tr><tr><td>2010</td><td>5</td><td>5</td><td>0</td></tr><tr><td>Total</td><td>108</td><td>101</td><td>7</td></tr></table> <table><tr><th colspan="4">Category II Examination Pass/Fail Rates</th></tr><tr><th>Year</th><th>Applicants</th><th>Passed</th><th>Failed</th></tr><tr><td>2007</td><td>92</td><td>92</td><td>0</td></tr><tr><td>2008</td><td>72</td><td>72</td><td>0</td></tr><tr><td>2009</td><td>51</td><td>47</td><td>4</td></tr><tr><td>2010</td><td>13</td><td>13</td><td>0</td></tr><tr><td>Total</td><td>228</td><td>224</td><td>4</td></tr></table> <p><i>Code of Alabama</i>, Section 34-2A-8 and 9</p>	Category I Examination Pass/Fail Rates				Year	Applicants	Passed	Failed	2007	38	36	2	2008	45	42	3	2009	20	18	2	2010	5	5	0	Total	108	101	7	Category II Examination Pass/Fail Rates				Year	Applicants	Passed	Failed	2007	92	92	0	2008	72	72	0	2009	51	47	4	2010	13	13	0	Total	228	224	4
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Licensees	<ul style="list-style-type: none">• Category I License – Administrator of an Assisted Living Facility• Category II License – Administrator of a Specialty Care Assisted Living Facility• Provisional License – Board approved applicants who pass Section A of either the Category I or Category II examination. The provisional licensee can administer a facility up to nine months. Upon completing required classroom training and passing Section B of the examination, the provisional licensee is issued a full license.• Emergency Permit – Issued to a person to perform the functions of an administrator as the result of the death or unexpected resignation of the assisted living administrator.																																																								

	<table border="1"> <tr> <th colspan="2">Licensees as of March 17, 2011</th></tr> <tr> <td>Category I</td><td>106</td></tr> <tr> <td>Category II</td><td>245</td></tr> <tr> <td>Active NHA,ALA</td><td>57</td></tr> <tr> <td>Provisional Category I</td><td>8</td></tr> <tr> <td>Provisional Category II</td><td>23</td></tr> <tr> <td>Emergency Permit</td><td>1</td></tr> <tr> <td>Total</td><td>440</td></tr> </table>	Licensees as of March 17, 2011		Category I	106	Category II	245	Active NHA,ALA	57	Provisional Category I	8	Provisional Category II	23	Emergency Permit	1	Total	440
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Renewals	<ul style="list-style-type: none"> • License renewal applications are due on the last day of the month in which the license expires. • Licenses may be renewed online • Completion of continuing education requirements is required for license renewal <p><i>Code of Alabama 1975, Section 34-2A-12</i></p>																
Reciprocity	<ul style="list-style-type: none"> • Assisted living administrators licensed in another state or who have been issued a certificate by any national organization may be issued a license provided the qualifications are equivalent to Alabama and the other state gives similar recognition to Alabama licensees. • The board has reciprocity with Georgia, South Carolina, California and Arizona <p><i>Code of Alabama 1975, Section 34-2A-11</i></p>																
Continuing Education	<ul style="list-style-type: none"> • Category I Assisted Living Administrator – 12 hours annually • Category II Assisted Living Administrator – 18 hours annually <p><i>Code of Alabama 1975, Section 34-2A-12</i></p>																
Employees	Executive Director - Part-time employee in the unclassified service of the Merit System - (20 hours per week).																
Legal Counsel	Bettie Carmack, Assistant Attorney General, employee of the Attorney General's Office																

Subpoena Power	<p>The board may issue subpoenas in connection with hearings on contested cases under authority of the state's Administrative Procedure Act. The Assisted Living licensing law does not provide the board with subpoena power.</p> <p><i>Code of Alabama</i> 1975, Section 41-22-12(c)</p>
Internet Presence	<ul style="list-style-type: none"> • http://www.aowb.alabama.gov/ • www.boeala.stateal.us • Board Members • Board Meetings • Board Members • Course Approval • Qualifications • Classroom Training/Test Dates • Rules & Regulations • Fee Schedule • Forms & Applications • Licensee Search • Links • Disciplinary Action • Newsletter
Attended Board Member Training	<p>Executive director Five board members</p>
Financial	
Source of Funds	Fees collected by the board
State Treasury	<p>Yes, Special Revenue Fund 1109</p> <p><i>Code of Alabama</i>, Section 34-2A-6</p>
Required Distributions	None
Unused Funds	<p>Retained by the board</p> <p><i>Code of Alabama</i>, Section 34-2A-6</p>

SIGNIFICANT ISSUES

There are no new significant issues

STATUS OF PRIOR FINDINGS/SIGNIFICANT ISSUES

Prior Significant Issue 2009-01

The board is charging fees to licensed nursing home administrators (NHA's) and acute care hospital administrators (ACHA's) for which no apparent statutory authority exists.

The *Code of Alabama 1975*, Section 34-2A-11 exempts NHA's and ACHA's from the assisted living licensure requirements, but provides that they may obtain and maintain an assisted living administrator license by paying an administrative fee set by the board (\$75) and annually submitting proof of employment as a NHA or ACHA. The board charges the administrative fee at initial licensure and annually thereafter.

If an NHA or ACHA submits annual proof of employment after the license renewal deadline, the board charges a late renewal fee of \$250, which is the same fee it charges to its regular licensees who are delinquent. For regular licensees, if 90 days or more has elapsed since the renewal deadline and the license has not been renewed, the license lapses, and the licensee is required by law to obtain a new license. The board also applies this provision to the NHA/ACHA licensees. For the NHA or ACHA, obtaining a new license requires only payment of the \$75 administrative fee and proof of employment as an ACHA or NHA. Some of the exempt NHA/ACHA licensees who are delinquent in submitting proof of employment intentionally let their licenses lapse and obtain a new license for \$75 rather than pay the late renewal fee of \$250. To counter this behavior, the board amended its administrative rule 135-X-7-01.6, to include an additional \$150 reapplication fee for the NHA/ACHA licensees.

We consider that the exemption statutes for NHA/ACHA's contain all of the requirements necessary for a licensed NHA or ACHA to obtain and maintain a license as a nursing home administrator. The exemption statutes require only payment of an administrative fee set by the board (\$75) and annual submission of proof of continued employment as a NHA or ACHA. Consequently, we consider any fees other than the \$75 administrative fee to be improper, including the \$150 reapplication fee and the \$250 late renewal fee. It is also not clear that the law authorizes the \$75 administrative fee to be charged at any time other than at initial licensure so long as annual proof of continued employment as a NHA or ACHA is submitted.

Various opinions of the Attorney General and Alabama Supreme Court cases have concluded that state boards and regulatory agencies are precluded from doing things not expressly or impliedly authorized by statute. An often cited principle in the court cases and the opinions is that, "Where a statute enumerates certain things on which it is to operate, the statute must be construed to exclude all things not expressly mentioned." In following this principle, the Alabama Supreme Court and the Attorney General (in opinions) have stated that where the law does not provide specific or implied authority for fees, fees cannot be charged.

The exemption statutes for NHA/ACHA's are found in the *Code of Alabama 1975*, Section 34-2A-11, which provides that: "(b) Any person who has a license in good standing, and continuously maintains such license as a licensed **nursing home administrator**, shall be exempt from the licensure requirement herein if the person at the time of application has responsibility for administration of an assisted living facility subject to the following conditions: (1) If the person wishes to also be issued a license as an assisted living administrator, the person shall pay an administrative fee as determined by the board and document initially and annually thereafter the good standing of the nursing home administrator license."

"(c) Any person who is an **administrator/chief executive officer of an acute care hospital** shall be exempt from the licensure requirement herein if the person at the time of application has responsibility for administration of an assisted living facility subject to the following conditions:

(1) If the person wishes to also be issued a license as an assisted living administrator, the person shall pay an administrative fee as determined by the board and document initially and annually thereafter their continued employment as an administrator/chief executive officer of an acute care hospital."

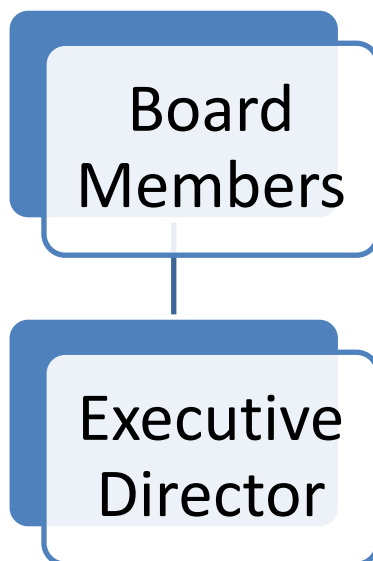
Current Status - The board has ceased charging the \$150 reapplication fee and the \$250 late renewal fee to nursing home administrators and acute care hospital administrators who wish to also be licensed as assisted living administrators. However, the board's administrative rules continue to list the \$150 reapplication fee, and the reapplication fee continues to be posted on the board's website.

Prior Finding 2010-02

The board by administrative rule created a \$25.00 replacement license fee for which no statutory authority exists. Opinions of the state's attorney general have held that fees not authorized by statute cannot be charged (AGO 87-00222, AGO 2002-193, AGO 80-181, AGO 89-131, and AGO 2009-015).

Current Status – The board is not charging the fee but the fee remains listed in the board's administrative rules.

ORGANIZATION



PERSONNEL

The board has one part-time employee, the executive director.

Title	Race	Gender	Merit System Classification
Executive Director	White	Female	Unclassified Salaried Employee

Bettie Carmack, Assistant Attorney General, an employee of the Attorney General's Office, provides legal services to the board, as needed.

PERFORMANCE CHARACTERISTICS

Number of Licensees per Employee as of March 17, 2011 - 440

Operating Disbursements per Licensee (2009-2010) - \$174.49

Number of Persons per Licensee in Alabama and Surrounding States

	Population *	Licensees	Persons per Licensee
Alabama	4,779,736	440	10,863
Florida	18,801,310	**	N/A
Georgia	9,687,653	**	N/A
Mississippi	2,967,297	**	N/A
Tennessee	6,346,105	645	9,839

* 2010 U.S. Census

** Florida, Georgia and Mississippi do not require assisted living administrators to be licensed.

Source: Executive Director

Notification to Licensees of Board decisions to Amend Administrative Rules

The board complied with notification procedures prescribed in the Administrative Procedure Act, which includes publication of proposed rules in the Administrative Monthly, and public hearings on proposed rules. Licensees are also notified of rule changes via the board's website.

COMPLAINT HANDLING

Administrative Rule 135-X-8-.01 provides for receipt, documentation and investigation of complaints against licensees and disciplinary actions. Since May 12, 2009 the board has had four complaints resulting in one license suspended, one license voluntarily surrendered, and no action taken on 2 licensees.

Initial Contact Documentation	<p>Complaints or charges against licensees must be in writing and submitted to the board. Board members or staff may submit a complaint in the same manner as any other member of the public; however the member would be removed from all proceedings except as a witness. When a complaint is received, the executive director will notify the individual, against whom a complaint has been made, of the existence of a complaint and the nature of the complaint. The individual is given an opportunity to comment and present information regarding the complaint.</p> <p>The executive director notifies the complainant in writing that the complaint has been received and is being investigated.</p>
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Anonymous Complaints	The board accepts anonymous complaints.
Investigative Process	<p>The executive director logs the complaint; places a notation in the administrator's file, and notifies the Hearing Committee (probable cause committee), which consists of two non-consumer members, the executive director and the board's legal counsel. The Hearing Committee investigates the complaint and determines if the complaint should be dismissed or if further disciplinary action should be taken. The <u>Guidelines Regarding Investigations of Complaints</u> states "If a Board member was involved in the investigation then he/she must abstain from voting on any action regarding the complaint."</p>
Probable Cause Determination	<p>Upon completion of the investigation, the executive director reports the findings recommendations of the Hearing Committee to the full board. The committee's recommendation will be either (a) to dismiss the charges and close the complaint file, (b) to accept a settlement agreement, or (c) to proceed with disciplinary action based on the merits of the charges. The board will rule on the Hearing Committee's recommendation.</p>
Resolution without a Formal Hearing	<p>If the board approves the charges to be dismissed, no further action is taken.</p> <p>If the board decides to accept a settlement, the Hearing Committee may negotiate the terms of a settlement, and the executive director submits the proposed settlement to the board. The board rules on accepting the settlement. Board members on the hearing committee do not vote.</p> <p>If the board may also decide to proceed directly with disciplinary action.</p> <p>The licensee and the complainant are notified of the board's decision. The licensee is given 30 days in which to request a hearing.</p>

Formal Hearing	If a hearing is held, the board may or may not suspend its actions until conclusion of the hearing. Persons appearing for a hearing may be represented by an attorney and may present evidence, affidavits, argument and briefs. A hearing officer is not used. Persons aggrieved by the final decision of the board are entitled to a review of the decision and may appeal to the circuit court in the county in which the assisted living administrator or applicant lives. Appeals from any order or judgment rendered by the circuit court to the supreme court.
Notification of Disposition of Complaint	The complainant is notified in writing of the disposition of the complaint.

REGULATION IN CONJUNCTION WITH OTHER ENTITIES

The **Alabama Department of Public Health (ADPH)** licenses and regulates the assisted living facilities that are administered by the board's licensees. Surveys of facilities performed by the ADPH can produce information that may affect the licensure of the administrator.

The **Assisted Living Association of Alabama**- According to its Internet website, the Assisted Living Association of Alabama represents more than three hundred providers and advocates for senior issues in Alabama. The association submits nominees to the governor for appointment to the five assisted living administrator positions on the Board of Assisted Living Administrators. In addition, the association's governing body is the statutory advisory council to the board (*Code of Alabama 1975*, Section 34-2A-7). Licensees obtain continuing education from training provided by the association at a cost of \$450. The board's three-member education committee, which approves courses of study, includes one member of the association's advisory council.

SMART GOVERNING

We reviewed the board's SMART reports for the 2010 and 2011 fiscal years for compliance with these standards and present the following observations:

2010 GOAL			COMMENTS	
To decrease cost per licensee by 15% by the end of FY12			The goal is appropriate. There is a directly related objective.	
OBJECTIVE	UNIT OF MEASURE	TARGET	ACTUAL (as reported)	COMMENT
Decrease cost per license by 5% by end of FY09	dollars	157.09	217.63 (see comment)	The actual performance was inappropriately computed from the board's appropriation rather than from actual cost of operations.

2011 GOALS			COMMENTS	
To decrease cost per licensee by 15% by the end of FY12			The goal is appropriate. There is a directly related objective.	
OBJECTIVES	UNIT OF MEASURE	TARGET	ACTUAL (as reported)	COMMENTS
To decrease cost per licensee by 5% by the end of FY11	dollars	151.20	Year not yet complete	Objective is appropriate.

FINANCIAL INFORMATION

The board operates from Special Revenue Fund 1109 in the State Treasury. The board's operating revenues consist of fees collected. The board is subject to the state's normal budget procedures and cannot expend funds without a legislative appropriation. Funds unspent and unobligated at the end of each fiscal are retained for subsequent use by the board.

Schedule of Fees

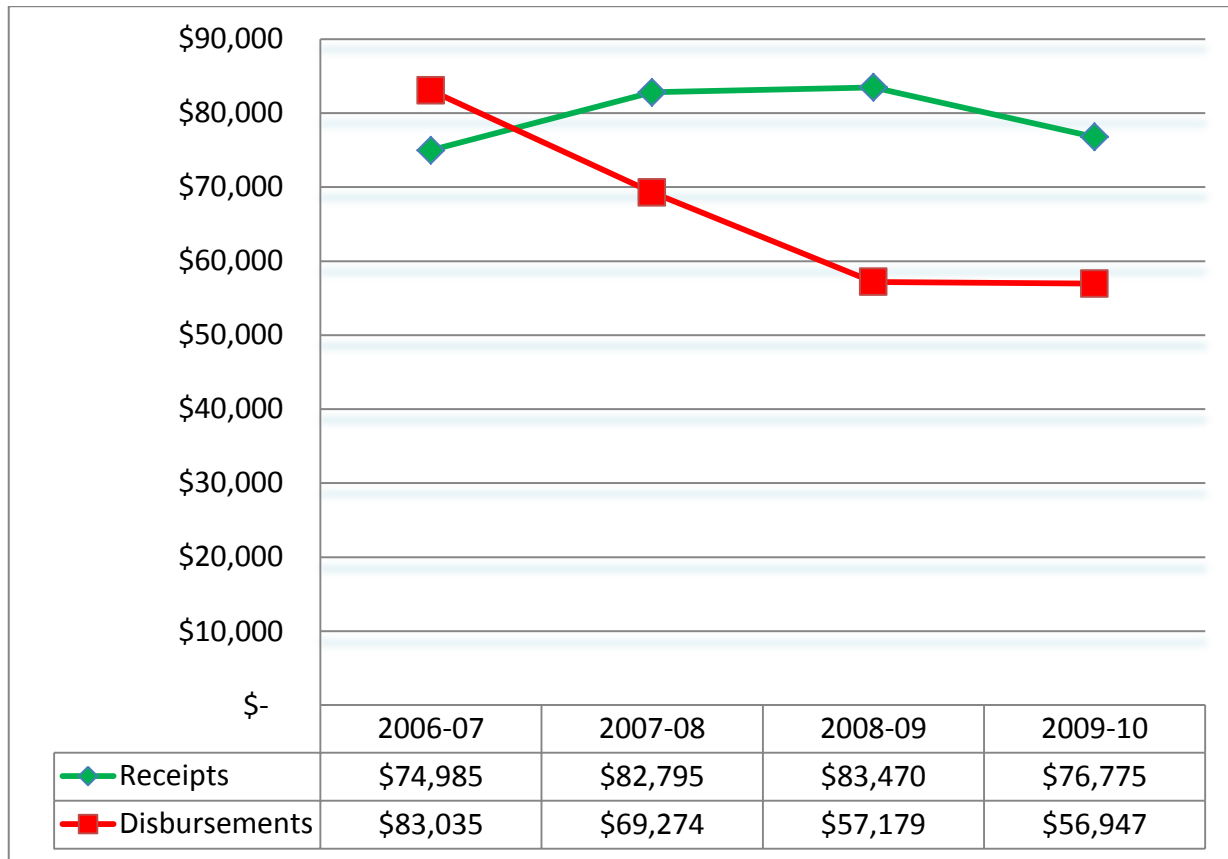
FEE CHARGED	AMOUNT AUTHORIZED	AMOUNT CHARGED	STATUTE	RULE
Initial Application Cat. I	\$90.00	\$ 90.00	§34-2A-10(a)(2)	135-X-13.01(2)
Initial Application Cat. II	\$100.00	\$100.00	§34-2A-10(a)(2)	135-X-13.01(2)
Reapplication	N/A	\$150.00	Not authorized by statute	135-X-13.01(12) & 135-X-5-.03(5)
Examination	\$125.00	\$125.00	§34-2A-8(a)	135-X-13.01(1) & 135-X-5-.03(1)
License	\$100.00	\$100.00	§34-2A-10(a)	135-X-13-.01(3)
License Renewal	\$150.00	\$150.00	§34-2A-12(b)	135-X-13-.01(5) & 135-X-7-.01(5)
Reciprocity Questionnaire	\$50.00	\$50.00	§34-2A-11(a)(2)	135-X-13-.01(7) & 135-X-12-.01
Late Renewal Penalty	\$250.00	\$250.00	§34-2A-12(d)(2)	135-X-13-.01(6) & 135-X-7-.01(7)
Inactive Reactivation	\$250.00	\$250.00	§34-2A-12(f)	135-X-13-.01(9) & 135-X-7-.01(8)
Bad Check	\$30.00	\$30.00	§8-8-15	135-X-13-.01(11)
Emergency Permit	\$200.00	\$200.00	§34-2A-10(b)	135-X-13-.01(4)
Administrative Fee	\$75.00	\$75.00	§34-2A-11(b)(1)	135-X-7-.01(10)(a) & 135-X-13-.01(8)
Administrative Fine	\$1,000.00	\$1,000.00	§34-2A-13(a)	135-X-7-.02(3)
Replacement License Fee	N/A	\$25.00	Not authorized by statute	135-X-13-.01 (13)

Schedule of Cash Receipts, Disbursements and Balances

October 1, 2006 through September 30, 2010

		2009-2010	2008-2009	2007-2008	2006-2007
<u>Receipts</u>					
License Fees		\$ 76,775.00	\$ 83,470.00	\$ 82,795.00	\$ 74,985.00
<u>Disbursements</u>					
Personnel Costs		28,354.92	28,880.88	11,859.00	23,660.99
Employee Benefits		2,169.12	2,209.40	907.22	6,626.00
Travel In-State		4,966.80	5,091.46	5,036.85	2,819.58
Repairs & Maintenance		-	-	118.50	-
Rentals and Leases		5,850.00	4,950.00	11,823.36	27,883.35
Utilities and Communications		3,793.20	3,593.78	995.11	125.25
Professional Services		6,708.20	7,401.03	35,327.02	21,602.44
Supplies, Materials and Operating Expenses		5,104.42	4,102.54	3,207.31	317.00
Other Equipment Purchased		-	950.00	-	-
Total Disbursements		56,946.66	57,179.09	69,274.37	83,034.61
Excess (Deficiency) of Receipts Over Disbursements		19,828.34	26,290.91	13,520.63	(8,049.61)
Cash Balance at Beginning of Year		64,028.11	37,737.20	24,216.57	32,266.18
Cash Balance at End of Year		83,856.45	64,028.11	37,737.20	24,216.57
Reserved for Unpaid Obligations		(5,218.00)	(4,211.60)	(8,348.69)	(7,626.67)
Unreserved Cash Balance at End of Year		\$ 78,638.45	\$ 59,816.51	\$ 29,388.51	\$ 16,589.90

Operating Receipts vs. Operating Disbursements (Chart)



QUESTIONNAIRES

Board Member Questionnaire

Questionnaires were sent to all nine members of the Board of Assisted Living Administrators of which five responded. The percentages shown are based on the number who responded to the question.

1. What are the most significant issues currently facing the Board and how is the Board addressing these issues?

Respondent 1: Law changes are needed. Proposals are being drafted for presentation.

Respondent 2: I interpret “significant issues” to mean challenges and/or problems. Since the Sunset Committee has accepted the Boards resolution to the issues involving the Assisted Living Association of Alabama, our “significant issues have been resolved. We are simply doing business as usual, issuing licenses and reviewing complaints against administrators.

Respondent 3: In my opinion there are no significant issues at this time. The Board is functioning very professionally and cares about the reputation and professionalism of assisted living in the state of Alabama.

Respondent 4: From my point of view, the Board needs to do more than just screen applicants for meeting the minimum requirements. It is time to incorporate more ethical challenges and “what if” situations. One thing the Board did was to give the two consumer representatives a real voice in the hearings. They are more likely to raise issues of concern to the public.

Respondent 5: Am aware of no out of the ordinary issues, accept concerned the legislature waste much of the state auditor's time on a Board that uses no state money, budget of less than 80,000 annually and it must cost thousands to have an auditor on site and then two higher ups in the auditing department meet with the board plus the person who did the auditing. Someone must have made a member of the sunset committee mad to waste this much state money when there are real problems throughout the state.

2. What changes to the Board’s laws are needed?

Respondent 1: To start charges for Nursing Home Administrators, charges for replacement fee license.

Respondent 2: Simple wording changes to the statutes and the addition of a new replacement license fee is being submitted to the legislature in the current session.

Respondent 3: At this time I believe the laws governing assisted living administrators in our State are sufficient. In answer to question 3, we receive no State monies.

Board Member Questionnaire

Respondent 4: Right now I am not qualified to address this question. As the "rookie" on the Board, I need to learn the existing laws well before I can reasonably suggest changes.

Respondent 5: None issue here out of the ordinary. The board with the assistance of an attorney from the AG office keep tuning and upgrading in an attempt to meet all state requirements.

3. Is the Board adequately funded?

Yes	3	60.0%
No	1	20.0%
No Opinion	1	20.0%

4. Is the Board adequately staffed?

Yes	4	80.0%
No	1	20.0%

5. Does the Board receive regular reports on the operation of the Board from the chief administrative officer?

Yes	4	80.0%
No	1	20.0%

6. Has the Board experienced any significant changes to its operation?

Yes	2	40.0%
No	3	60.0%

7. Does the Board plan any significant changes to its operations?

No	4	80.0%
Unknown	1	20.0%

Licensee Questionnaire

Questionnaires were sent to one hundred licensees of whom thirty-two responded. The percentages shown are based on the number who responded to the question.

1. Do you think regulation by the Alabama Board of Examiners of Assisted Living Administrators is necessary to protect public welfare?

Yes	24	75.0%
No	7	21.9%
Unknown	1	3.1%

Respondent 26: Necessary, but currently unjust in some ways

2. Do you think any of the Board's laws, rules, and policies are an unnecessary restriction on the practice of your profession?

Yes	15	46.9%
No	16	50.0%
Unknown	1	3.1%

Respondent 2: Some of them are unnecessary and interpreted poorly.

Respondent 14: CEUs and license renewal period should be extended from one year to 2 years like the RN.

Respondent2: They require you retake the Category I administrator's license, in order to secure the Category II, unless you take them simultaneously which is a repeat of time and money. It is unfair that your license are only renewable if you are currently employed by an Alabama Assisted Living home, you may have had temporary unemployment or chosen because of personal circumstances to be temporarily unemployed.

3. Do you think any of the Board's requirements are irrelevant to the competent practice of your profession?

Yes	8	25.0%
No	21	66%
Unknown	1	3.1%
No Opinion	1	3.1%

4. Are you adequately informed by the Board of changes to and interpretations of the Board positions, policies, rules and laws?

Yes	19	59.4%
No	11	34.4%
No Opinion	2	6.3%

Respondent7: Would be better if notified of all changes in writing

Respondent11: Some changes have not been reported to us and surveyors have stated that the changes were announced at either a conference or a region meeting.

5. Has the Board performed your licensing and renewal in a timely manner?

Yes	30	93.8%
Unknown	1	3.1%
No Opinion	1	3.1%

6. Do you consider mandatory continuing education necessary for competent practice?

Yes	25	78.1%
No	6	18.8%
No Opinion	1	3.1%

Respondent 2: If the continuing education is relevant and beneficial information.

Respondent 5: Some of the "approved" workshops were lame - touting hocus-pocus (alternative) methods of nursing, etc.

Respondent 9: I choose to continue my education for competent practice. I object to being mandated and told to take a restricted set of courses or for having credits for my nursing courses ignored.

Respondent 30: Feel it is necessary, although to obtain continuing education is very difficult in regards to availability and convenience. As a professional on this level the demands of the occupation and time can be very limited.

7. Has the Board approved sufficient providers of continuing education to ensure your reasonable access to necessary continuing education hours?

Respondent 5: One issue is affordability - not enough choices of providers

Yes	22	68.8%
No	9	28.1%
No Opinion	1	3.1%

8. What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Board doing to address the issue(s)?

Respondent 1: Ensuring quality care--The board's licensing requirements ensures that qualified personnel are involved in each facility.

Respondent 2: The survey process is inconsistent. The interpretation of the ADPH rules and regulations is different among the various surveyors.

Respondent 3: We are becoming more and more like a nursing home and the rules are just not clear. They are trying to draw a clear line between the types of long term care.

Respondent 4: The oppressive regulatory environment in assisted living that sometimes does not act in the best interest of individual residents who are doing well. Surveyors are inconsistent in interpreting laws and regulations and there is no real way to disagree with them.

Respondent 5: Ambiguity about rules/regs/applications - nothing done, that I'm aware of

Respondent 6: Too stringent of regulations on ALF residents with mild cognitive impairment.

Respondent 7: Residents safety. Code enforcement

Respondent 8: Unlicensed assisted living facilities. The Board continues to require each Administrator to have a license. To obtain a license you must complete an exam pertaining to our industry. The Administrator must know the rules to provide quality care to our Alabama citizens. This Board also approves the education in our ever so changing industry.

Respondent 9: The Board is attempting to turn "Assisted Living" facilities into over regulated nursing homes. They need to allow us to safely care for people as they would in their own homes. Mandating "Care Plans for a facility" in addition to care plans generated by the resident's physician is over regulatory.

Respondent 10: The most significant issue is facilities that try and "beat the system". Because there will always be people who put dollars before resident care I don't think any amount of policing or regulations that can be implemented to stop it.

Respondent 11: Too many residents that require more care than an assisted living can give. Wrong placement. Not sure what the board can do about it.

Respondent 12: There seems to be a lack of communication between the ALAA and the ADPH. Surveyors are not consistent in their citations and there is no recourse for facilities who receive citations that they do not feel were appropriate.

Respondent 13: No provision for Administrators to seek advisory opinions regarding compliance or non-compliance with state assisted living rules and regulations. Not sure that the Board is doing anything to address the issue.

Respondent 14: No comment.

Respondent 15: Have no significant issue(s) with my profession.

Respondent 16: The admission and continued stay of residents in an Assisted Living Facility whom decline mentally but are still able to direct their own care. The current guidelines are too strict on residents continued stay just because of their mild dementia or just old age. The Board is seeking a change to this state regulation to allow continued stay of residents in an ALF is they do not pose danger to themselves or others, e.g. wandering.

Respondent 17: 1. Many regulations are very outdated. 2. The inconsistencies among the surveyors regarding the interpretation of the regulations. The Board has identified regulations that need revising or updating with data to support the change in certain regulations.

Respondent 18: I Think the medication policy needs to be reviewed, I do not know of anything at the present moment that is being addressed about this policy.

Respondent 19: Not certain as to what the board is supposed to do. We have the state, the board and the Assisted Living Association; I think the industry needs someone to actually support the licensed facilities.

Respondent 20: N/A

Respondent 21: The most significant issue is the operation of unlicensed facilities -- I do not know specifically what the Board is doing about it.

Respondent 22: Unknown

Respondent 23: The ADPH Regulations governing Residential facilities make it difficult to manage a facility and worrisome to Administrators.

Respondent 24: Resident eligibility

Respondent 25: The Department of Health is trying to set standards for ALF to high and the Board is trying to help fight unreasonable expectations by DOH.

Respondent 26: No state assistance to fund assisted living

Respondent 27: Disconnect between surveyors and board

Respondent 28: The State's (ADPH) strict guidelines especially regarding medication administration that will force more residents into long term care facility and place a higher financial burden on State & Federal programs

Respondent 29: The issue of out of state corporations pressuring the administrator to choose the corporate method of operation or the Boards which usually leaves the administrators' licensure unprotected. What is the Board doing to address the issue? Not sure Established criteria/rules to govern out of state corporations (cooperate personnel) to obtain licensure and training from the Board to ensure understanding of the administrators licensure.

Respondent30: 1. ADPH staffing requirement for 3rd shift 2. Equating dementia with resident's failure to recognize his/her medications

Respondent31: The board does not seem to embrace younger professionals interested in this arena. It is vital for the care of the senior population.

Respondent32: Rules and regulation changes are needed.

9. Do you think the Board and its staff are satisfactorily performing their duties?

Yes	19	59.4%
No	3	9.4%
Unknown	7	21.9%
No Opinion	3	9.4%

Respondent 5: Sometimes it's hard to get any answers out of them!

Respondent 9: We appreciated the inspectors' willingness to teach during the survey process. However our deficiencies were released to a person in their facility prior to our plan of correction being filed. I object to the public release prior to placing the plan of correction with those noted deficiencies. That is in simple terms unprofessional and unfair since the deficiencies were cautionary and involved forms and paper documentation.

10. Has any member, or staff, of the Board ask for money (other than normal licensing fees), services, or other things of value in return for a license?

No	31	96.9%
No Opinion	1	3.1%

Complainant Questionnaire

Complaints were sent to five complainants of which three responded. The percentages shown are based on the number who responded to the question.

1. Was your complaint filed with the Alabama Board of Examiners of Assisted Living Administrators by?

Mail	3	100.0%
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2. Was receipt of your complaint promptly acknowledged?

Yes	2	66.7%
Unknown	1	33.3%

Respondent 2: By letter

If yes, approximately how long after you filed your complaint were you contacted by the Board of Examiners of Assisted Living Administrators?

Within 20 days	2	66.7%
Unknown	1	33.3%

3. Was the employee who responded to your complaint knowledgeable and courteous?

Courteous	1	33.3%
Both	2	66.7%

4. Did the Board of Examiners of Assisted Living Administrators communicate the results of investigating your complaint to you?

Yes	3	100.0%
No	0	0.0%

5. Do you think the Board of Examiners of Assisted Living Administrators did everything it could to resolve your complaint?

Yes	2	66.7%
No	1	33.3%

6. Were you satisfied with your dealings with the Board of Examiners of Assisted Living Administrators?

Yes	2	66.7%
No	1	33.3%

7. Do you have anything else you would like to add to your response?

Respondent 1: No response

Respondent 2: Were not satisfied

Respondent 3: I am sorry but I do not remember the response time but it seemed quick.

APPENDICES

SMART Performance Report

Thursday, November 18, 2010
EBO Form 10

FY 10 SMART Quarterly Performance Report

Page 2 of 3

Basic Agency

Agency: 374 - Assisted Living Administrators, Board of Examin				Program: 653 - PRO AND OCCU LICENSING AND REG							
Organization: -				Activity: -							
Key Goal:											
Goal 1	To decrease the cost per licensee by 15% by the end of FY12								Governor's Priority:	5	
Objectives and Quarterly Targets:											
Performance Measures		First Quarter		Second Quarter		Third Quarter		Fourth Quarter		Annual	
Objectives	Unit of Measure	Target	Actual	Target	Actual	Target	Actual	Target	Actual	Target	Actual
(O1-Efficiency) Decrease cost per licensee by 5% by end of FY10	dollars	--	N/A	--	N/A	--	n/a	--	n/a	157.09	217.63

FY 11 SMART Operations Plan**Basic Format**

Agency: 374 - Assisted Living Administrators, Board of Examin	Program: 653 - PRO AND OCCU LICENSING AND REG
Organization: -	Activity: -

Key Goal:

Goal 1	To decrease the cost per licensee by 15% by the end of FY12	Governor's Priority:	5
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Strategies:

Strategy 1:	To maintain the current process of licensing administrators.
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Objectives and Quarterly Targets:

Performance Measures		First Quarter		Second Quarter		Third Quarter		Fourth Quarter		Annual	
Objectives	Unit of Measure	Target	Actual *	Target	Actual *	Target	Actual *	Target	Actual *	Target	Actual *
(O1-Efficiency) Decrease cost per licensee by 5% by end of FY11	dollars	--		--		--		--		151.20	

* Actual performance data is not currently available for this quarter.

Critical Issues (Optional)		Category	Critical Issues Strategies
External CI1	N/A	Other	N/A / N/A

Statutory Authority

CHAPTER 2A. ASSISTED LIVING ADMINISTRATORS.

§ 34-2A-1. Definitions.

Current through the end of the 2010 Regular Session.

For purposes of this chapter, the following terms shall have the following meanings:

(1) Assisted living administrator. Any individual who is charged with the general administration of an assisted living facility or a specialty care assisted living facility, whether or not the individual has an ownership interest in the facility, and whether or not his or her functions and duties are shared with one or more other individuals.

(2) Assisted living facility. Any facility, including both assisted living facilities and specialty care assisted living facilities, that is defined as such for licensing purposes pursuant to Section 22-21-20. For purposes of this chapter, the term "assisted living facility" shall not include family assisted living facilities as the term is defined in the rules and regulations promulgated by the Department of Public Health.

(3) Board. The Board of Examiners of Assisted Living Administrators of the State of Alabama.

(4) Executive director. The executive director of the board.

(5) Practice of assisted living administration. The planning, organizing, directing, and control of the operation of an assisted living facility.

(6) Provisional assisted living administrator. An individual who has been issued a provisional license by the board.

(7) Provisional license. A temporary license issued to a provisional assisted living administrator by the board.

CREDIT(S)

(Act 2001-1057, 4th Sp. Sess., p. 1032, § 1; Act 2004-73, p. 90, § 3.)

§ 34-2A-2. License required; permission to supervise multiple facilities.

Current through the end of the 2010 Regular Session.

(a) All administrators of assisted living facilities or specialty care assisted living facilities as recorded in the records of the State Department of Public Health shall be issued a provisional license, as defined herein, upon the effective date of this act. On and after September 1, 2003, no assisted living facility in the state may operate unless it is under the supervision of an administrator who holds a currently valid assisted living administrator's license, or new initial provisional license, issued by the board. No person shall practice or offer to practice assisted living administration in this state or use any title, sign, card, or device to indicate that he or she is an assisted living administrator unless the person shall have been duly licensed as an assisted living administrator or as a provisional assisted living administrator. In the event an assisted living administrator dies, unexpectedly resigns, becomes incapacitated, or has his or her license revoked, the person or persons then responsible for the management of the assisted living facility shall immediately notify the board and the State Board of Health. The board may issue an emergency permit to a person performing the functions of

administrator in the assisted living facility for a reasonable period of time from the date of death, unexpected resignation, incapacitation, or revocation of the license of the assisted living administrator, but not to exceed 120 days. Although the State Board of Health, in its discretion, may permit the assisted living facility to continue to operate under the supervision of a person issued an emergency permit, nothing in this section shall be construed as prohibiting the State Board of Health from denying or revoking the license of the assisted living facility where the State Board of Health has determined that the person with the emergency permit does not demonstrate an ability or willingness to comply with State Board of Health rules governing assisted living facilities or where the State Board of Health has determined that the facility is not otherwise in compliance with those rules.

(b) Nothing in this section shall be construed to prohibit a licensed assisted living administrator from supervising more than one assisted living facility if specific permission is granted by the State Department of Public Health.

CREDIT(S)

(Act 2001-1057, 4th Sp. Sess., p. 1032, § 2.)

§ 34-2A-3. Board of Examiners of Assisted Living Administrators.

Current through the end of the 2010 Regular Session.

(a) There is created a Board of Examiners of Assisted Living Administrators composed of nine members, seven members as set out in this subsection, and two additional consumer members as set out in subsection (b). The membership of the board shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of the state. The seven original members shall be composed as follows: Five members shall be assisted living administrators duly licensed and registered under this chapter; one member shall be a physician licensed under the laws of the state who is actively concerned in a practice with the care of chronically ill and infirm, aged patients; and one shall be a licensed nursing home administrator who in the same or contiguous facility manages assisted living beds. Appointments to the board for those positions to be held by assisted living administrators shall be made by the Governor from a list of three nominees for each position to be submitted to the Governor by the Assisted Living Association of Alabama, Inc. The appointment of the nursing home administrator shall be made from a list of three nominees submitted to the Governor by the Alabama Nursing Home Association, Inc. The appointment to the board of the member for the position to be held by a physician shall be made from a list of three nominees submitted to the Governor by the Medical Association of the State of Alabama.

(b) Within 30 days of March 1, 2002, the Governor shall appoint two consumer members of the board. The consumer members shall vote in all matters. At least one consumer member shall be 65 years of age or older and no consumer member, or a spouse or immediate family member of a consumer member, shall be a licensee of the board or be employed in the assisted living profession.

(c) When the terms of all members of the board expire in April 2005, the Governor shall appoint five members to two-year terms and four members to three-year terms as follows: Three assisted living administrators, the licensed nursing home administrator, and one consumer member shall be appointed to two-year terms; two assisted living administrators, the licensed physician, and one consumer member shall be appointed to three-year terms. Thereafter, all members shall serve three-year terms of office.

(d) All members of the board shall be citizens of the United States and shall be residents of the state.

(e) Except as otherwise provided in this section, each member shall serve three-year staggered

terms and no board member shall serve more than two consecutive full three-year terms. All members shall continue to serve until the Governor appoints a successor.

(f) The Governor may remove any board member for misconduct, incapacity, incompetence, or neglect of duty after the board member so charged has been served with a written statement of charges and has been given an opportunity to be heard. Absence from any three consecutive meetings of the board within a calendar year, without cause acceptable to the Governor and the board, shall be deemed cause for removal.

(g) Any vacancy created by the death, resignation, or removal of any board member shall be filled by the Governor for the unexpired term in the same manner as required by this chapter to make appointments.

(h) Each member of the board shall receive a per diem fee of not less than fifty dollars (\$50) nor more than one hundred dollars (\$100) to be determined by the board for the time spent in the performance of official duties. Each member shall be reimbursed for all necessary and proper travel and incidental expenses incurred in implementing this chapter as is provided to state employees by the laws of the state and regulations of the State Personnel Director. In setting the per diem fee, the board shall give due consideration to funds which are available for that purpose.

(i) The board shall hold four or more meetings a year. A majority of the members of the board shall constitute a quorum at any meeting except as provided in Section 34-2A-13. A majority vote of the members present shall be sufficient to transact the business of the board except as provided in Section 34-2A-13. Meetings may be called by the chair or by a majority of the members of the board. Members shall be given seven days' written notice of all meetings.

(j) The board shall annually elect from its members a chair and a vice-chair, at the first meeting of the board held after October 1 of each year, and each shall serve until the first meeting held after October 1 of the following year. In the event of the death, resignation, or removal of the chair from the board, the vice-chair shall succeed as chair for the remainder of the unexpired term. In the event of the death, resignation, removal, or succession to the office of chair of a vice-chair, a successor shall be elected by the board to fill the remainder of the unexpired term as vice-chair. The chair, or in the absence of the chair, the vice-chair, shall preside at all meetings of the board. The chair of the board may appoint an executive director to the board, with the consent of the members of the board, who shall serve at the pleasure of the board. The board shall fix the salary of the executive director. The executive director shall be the executive officer to the board but may not be a member of the board. The executive director shall have those powers and shall perform those duties as are prescribed by law and the rules and regulations of the board. A clerk and sufficient deputy clerks to adequately assist the board and executive director in the keeping of the records and in the performance of their duties may be appointed by the board subject to the Merit System.

(k) The board is subject to the Alabama Sunset Law of 1981, and is classified as an enumerated agency pursuant to Section 41-20-3. The board shall automatically terminate on October 1, 2004, and every four years thereafter, unless a bill is passed that the board be continued, modified, or reestablished.

CREDIT(S)

(Act 2001-1057, 4th Sp. Sess., p. 1032, § 3; Act 2004-73, p. 90, § 3; Act 2010-152, p. 218, § 3.)

§ 34-2A-4. Powers and duties of board.

Current through the end of the 2010 Regular Session.

(a) It shall be the function and duty of the board to perform the following:

(1) Develop, impose, and enforce standards which shall be met by individuals in order to receive a license as an assisted living administrator, which standards shall be designed to insure that assisted living administrators will be individuals who are of good character and are otherwise suitable and who, by training or experience in the field of institutional administration, are qualified to serve as assisted living administrators.

(2) Develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets these standards.

(3) Issue licenses to individuals determined, after application of the techniques, to meet these standards and revoke or suspend licenses previously issued by the board in any case where the individual holding any license is determined substantially to have failed to conform to the requirements of these standards.

(4) Receive, investigate, and take appropriate action with respect to any charge or complaint filed with the board to the effect that any individual licensed as an assisted living administrator has failed to comply with the requirements of these standards.

(5) Establish and carry out procedures designed to insure that individuals licensed as assisted living administrators will, during any period that they serve as such, comply with the requirements of these standards.

(6) Conduct a continuing study and investigation of assisted living facilities and administrators of assisted living facilities within the state with a view to the improvement of the standards imposed for the licensing of these administrators and of procedures and methods for the enforcement of these standards with respect to administrators of assisted living facilities who have been licensed as such.

(b) The board may develop, impose, and enforce additional standards which shall be met by individuals in order to receive additional certification and/or license as a specialty care assisted living administrator, which standards shall be designed to insure that specialty care assisted living administrators will be individuals who are of good character and are otherwise suitable and who, by training or experience in the field of institutional administration, are qualified to serve as assisted living administrators.

(c) The board shall have the authority to perform the following:

(1) Make rules and regulations, not inconsistent with law, as may be necessary for the proper performance of its duties, and to take other actions as may be necessary for the proper performance of its duties.

(2) Establish, provide, or approve various education programs or courses for assisted living administrators, and prescribe rules and regulations requiring applicants for licenses as assisted living administrators to attend certain programs or courses as a prerequisite to their being admitted to the examination or issued a license and requiring licensed assisted living administrators to attend these programs or courses as a prerequisite to their being issued any license renewal.

CREDIT(S)

(Act 2001-1057, 4th Sp. Sess., p. 1032, § 4.)

§ 34-2A-5. Rule-making.

Current through the end of the 2010 Regular Session.

The Alabama Administrative Procedure Act shall govern all rule-making proceedings of the board.

CREDIT(S) (Act 2001-1057, 4th Sp. Sess., p. 1032, § 5.)

§ 34-2A-6. Board of Examiners of Assisted Living Administrators Fund.

Current through the end of the 2010 Regular Session.

There is hereby established a separate special revenue trust fund in the State Treasury to be known as the Board of Examiners of Assisted Living Administrators Fund. All receipts collected by the board under the provisions of this chapter shall be deposited into this fund and shall be used only to carry out the provisions of this chapter. Receipts may be disbursed only by warrant of the state Comptroller upon the State Treasury, upon itemized vouchers approved by the chair of the board. No funds may be withdrawn or expended except as budgeted and allotted according to Sections 41-4-80 to 41-4-98, inclusive, and Section 41-19-12, and only in amounts as stipulated in the general appropriation bill or other appropriation bills. A financial audit shall be conducted by the Examiners of Public Accounts of all receipts and expenditures, and a written report of the audit shall be given to each board member.

CREDIT(S)

(Act 2001-1057, 4th Sp. Sess., p. 1032, § 6.)

§ 34-2A-7. Advisory council.

Current through the end of the 2010 Regular Session.

The governing body of the Assisted Living Association of Alabama, Inc., shall constitute an advisory council to the board, and the board shall be required to counsel with the advisory council in connection with the administration of this chapter.

CREDIT(S)

(Act 2001-1057, 4th Sp. Sess., p. 1032, § 7.)

§ 34-2A-8. Requirements for examination; fees.

Current through the end of the 2010 Regular Session.

(a) The board shall admit to examination for licensure as an assisted living administrator any candidate who submits evidence of good moral character and suitability as prescribed by the board and who submits evidence to the board that he or she is at least 19 years of age, a citizen of the United States or, if not a citizen of the United States, a person who is legally present in the United States with appropriate documentation from the federal government, that he or she is a high school graduate or has completed an educational program equivalent thereto, and that he or she has completed any additional educational requirements prescribed by the board. The board may exempt the educational requirements for practicing administrators on March 1, 2002, based on acceptable experience and tenure in the applicant's current position. Each candidate shall also be required, prior to admission to the examination, to pay an examination fee established by the board pursuant to its rule-making authority.

(b) The board may establish an application fee for the internship or administrator in training (AIT) program, if such a program is established, and a fee for preceptor, certification, and recertification of any administrator in training (AIT) program pursuant to its rule-making authority.

CREDIT(S)

(Act 2001-1057, 4th Sp. Sess., p. 1032, § 8; Act 2008-144, p. 231, § 3.)

§ 34-2A-9. Examination.

Current through the end of the 2010 Regular Session.

(a) The board shall determine the subjects of examinations for applicants for licensure as assisted living administrators, or licensure or certification of specialty care assisted living administrators if established, and the scope, content, and format of the examinations, which in any examination shall be the same for all candidates. The examinations shall include examination of the applicant to demonstrate his or her proficiency in the rules and regulations of health and safety; provided, however, that the examination given to initial provisional licensees shall be limited to these rules and regulations. The examinations may consist of written or oral questions, or both.

(b) Examinations shall be held at least four times each year, at times and places designated by the board.

CREDIT(S)

(Act 2001-1057, 4th Sp. Sess., p. 1032, § 9.)

§ 34-2A-10. Issuance of license.

Current through the end of the 2010 Regular Session.

(a) The board shall issue a license to an applicant, on a form provided for that purpose by the board, certifying that the applicant has met the requirements of the laws, rules, and regulations entitling him or her to serve, act, practice, and otherwise hold himself or herself out as a duly licensed assisted living administrator and has paid a fee established by the board pursuant to its rule-making authority for original licensure, provided the applicant meets all of the following qualifications:

(1) Has successfully complied with the educational and training requirements of this chapter and of the rules and regulations of the board promulgated under this chapter.

(2) Has paid an application fee established by the board pursuant to its rule-making authority for all applicants.

(3) Has qualified for and passed the examination provided for in this chapter.

(b) The board may establish and collect a fee pursuant to its rule-making authority for the issuance of a temporary emergency permit issued pursuant to Section 34-2A-2.

CREDIT(S)

(Act 2001-1057, 4th Sp. Sess., p. 1032, § 10.)

§ 34-2A-11. Administrators licensed in other state; licensed nursing home administrators; acute care hospital administrators, etc.

Current through the end of the 2010 Regular Session.

(a) The board may, subject to this chapter and the rules and regulations of the board prescribing the qualifications for an assisted living administrator license, issue a license to an assisted living administrator who has been issued a license by the proper authorities of any other state or issued a certificate of qualification by any national organization, upon complying with the provisions of licensure, payment of a fee established by the board pursuant to its rule-making authority, and upon submission of evidence satisfactory to the board of all of the following:

(1) That the other state or national organization maintained a system and standards of qualification and examinations for an assisted living administrator license or certificate which were substantially equivalent to those required in this state at the time the other license or certificate was issued by the other state or national organization.

(2) That the other state gives similar recognition and endorsement to assisted living administrator licenses of this state. The board may charge a fee for completion of a reciprocity questionnaire, pursuant to its rule-making authority.

(b) Any person who has a license in good standing, and continuously maintains such license as a licensed nursing home administrator, shall be exempt from the licensure requirement herein if the person at the time of application has responsibility for administration of an assisted living facility subject to the following conditions:

(1) If the person wishes to also be issued a license as an assisted living administrator, the person shall pay an administrative fee as determined by the board and document initially and annually thereafter the good standing of the nursing home administrator license.

(2) If any person requests an exemption from the licensure requirements provided herein during the initial 18-month licensing period described in subsection (a) of Section 34-2A-2, the initial license issued shall be a provisional license until the end of the 18-month period at which time, and thereafter, an active license shall be issued.

(3) Any assisted living administrator license issued according to subdivision (1) or subdivision (2) of this subsection shall become void if the requisite nursing home administrator license becomes void. Further, the license shall become inactive, as described in subsection (e) of Section 34-2A-12, if the licensee no longer has responsibility for an assisted living facility. After 12 months in inactive status, the license shall expire and become void.

(c) Any person who is an administrator/chief executive officer of an acute care hospital shall be exempt from the licensure requirement herein if the person at the time of application has responsibility for administration of an assisted living facility subject to the following conditions:

(1) If the person wishes to also be issued a license as an assisted living administrator, the person shall pay an administrative fee as determined by the board and document initially and annually thereafter their continued employment as an administrator/chief executive officer of an acute care hospital.

(2) If any person requests an exemption from the licensure requirements provided herein during the initial 18-month licensing period described in subsection (a) of Section 34-2A-2, the initial license issued shall be a provisional license until the end of the 18-month period at which time, and thereafter, an active license shall be issued.

(3) Any assisted living administrator license issued according to subdivision (1) or subdivision (2) of this subsection shall become void if the person no longer is the administrator/chief executive officer of a hospital. Further, the license shall become inactive, as described in subsection (e) of Section 34-2A-12, if the licensee no longer has responsibility for an assisted living facility. After 12 months in inactive status, the license shall expire and become void.

(4) For the purpose of this subsection, the term "acute care hospital" shall be defined as a health institution planned, organized, and maintained for offering to the public generally facilities and beds for use in the diagnosis and/or treatment of illness, disease, injury, deformity, abnormality, or pregnancy, when the institution offers such care of service for not less than 24 consecutive hours in any week to two or more individuals not related by blood or marriage to the owner and/or chief executive officer/administrator, and, in addition, the hospital may provide for the education of patients, medical and health personnel, as well as conduct research programs to promote progress and efficiency in clinical and administrative medicine.

CREDIT(S)

(Act 2001-1057, 4th Sp. Sess., p. 1032, § 11.)

§ 34-2A-12. Renewal, expiration of license; inactive status; maintenance of records; continuing education.

Current through the end of the 2010 Regular Session.

(a) Every individual who holds a valid current license as an assisted living administrator issued by the board under this chapter shall immediately upon issuance have the right and privilege of acting and serving as an assisted living administrator and of using the abbreviation "A.L.A." after his or her name. Thereafter, the individual shall annually be required to make application to the board for a renewal of license and to report any facts requested by the board on forms provided for that purpose.

(b) Upon making application for a renewal of a license, the individual shall pay an annual license fee established as determined by the board pursuant to the rule-making authority and, at the same time, shall submit evidence satisfactory to the board that during the year immediately preceding application for renewal he or she has complied with the requirements of the board concerning the continuation of education of assisted living administrators.

(c) Upon receipt of the application for renewal of a license, the renewal fee, and the evidence with respect to continuing education, the board shall issue a license renewal to the assisted living administrator.

(d)(1) Failure to secure an annual renewal of a license based on a failure to meet the continuing education requirements, shall result in the expiration of the license. An expired license may not be reactivated. All persons holding an expired license shall be required to submit a new application and follow all procedures for licensure of a new applicant.

(2) A licensee who complies with the continuing education requirements, but who does not renew within 90 days following its due date, shall be deemed delinquent and may renew within the 90-day period by paying a late renewal fee established by the board pursuant to its rule-making authority. A license that is not renewed within the 90-day period shall be deemed expired and is subject to reapplication as provided in subdivision (1).

(e) A licensee who holds a current license and who is not practicing as an assisted living administrator may place that license into an inactive status upon written application to the board. Any licensee whose license has been placed on inactive status may not engage in the practice of assisted living administration.

(f) A licensee whose license is on inactive status who wishes to reactivate that license may do so by making application to the board. The applicant shall attach proof of having completed twice the annual hours' requirement of approved continuing education credits within one year of making application for license reactivation and shall pay a reactivation fee established by the board pursuant to its rule-making authority. A licensee may not have his or her license in inactive status for more than five years. After five years in inactive status, the license automatically expires.

(g) The board shall maintain a file of all applications for licensure that includes the following information on each applicant: Residence, name, age, the name and address of his or her employer or business connection, the date of application, educational experience qualifications, action taken by the board, serial numbers of licenses issued to the applicant, and the date on which the board acted on or reviewed the application.

(h) The board shall maintain a list of current licensees of the board and shall furnish the list on demand to any person who pays a fee established by the board pursuant to its rule-making authority.

The State Department of Public Health and other state agencies with a direct need shall be provided copies at no cost.

(i) The board shall adopt a program for continuing education for its licensees by September 1, 2002. After that date, successful completion of the continuing education program by board licensees shall be required in order to obtain a renewal license.

(j) Continuing education shall not result in a passing or failing grade.

CREDIT(S)

(Act 2001-1057, 4th Sp. Sess., p. 1032, § 12.)

§ 34-2A-13. Disciplinary actions; review

Current through the end of the 2010 Regular Session.

(a) The board may discipline its licensees by the adoption and collection of administrative fines, not to exceed one thousand dollars (\$1,000) per violation, and may institute any legal proceedings necessary to effect compliance with this chapter.

(b) The license of any person practicing or offering to practice assisted living administration may be revoked or suspended by the board, or the person may be reprimanded, censured, or otherwise disciplined in accordance with the provisions of this section upon decision and after due hearing in any of, but not limited to, the following cases:

(1) Upon proof that the person has willfully or repeatedly violated any of the provisions of this chapter or the rules enacted in accordance with this chapter.

(2) Conduct or practices deemed to be detrimental to the lives, health, safety, or welfare of the residents or patients of any assisted living facility or health care facility in this state or any other jurisdiction.

(3) Conviction in this state or any other jurisdiction of a felony or any crime involving the physical, sexual, mental, or verbal abuse of an individual.

(4) Conviction in this state or any other jurisdiction of any crime involving fraud.

(c) The board shall have the jurisdiction to hear all charges brought under this section against any person having been issued a license as an assisted living administrator or having been issued a license as a provisional assisted living administrator and, upon a hearing, shall determine the charges upon their merits. If the board determines that disciplinary measures should be taken, the board may revoke his or her license, suspend him or her from practice, or reprimand, censure, or otherwise discipline the person.

(d) All proceedings under this section shall be conducted by the board, according to its administrative rules, and the Alabama Administrative Procedure Act.

(e) Any party aggrieved by a final decision or order of the board suspending, revoking, or refusing to issue a license is entitled to a review of the decision or order by taking an appeal to the circuit court of the county in which the assisted living administrator or applicant resides. In such cases, the appeal shall be taken by filing notice thereof with the circuit court within 30 days of the date of notice by the board of its decision. Appeals from any order or judgment rendered thereon by the circuit court to the Supreme Court of Alabama shall be available as in other cases.

(f) The board shall report to the Department of Public Health all final disciplinary actions taken under this section.

CREDIT(S)

(Act 2001-1057, 4th Sp. Sess., p. 1032, § 13.)

§ 34-2A-14. Reissuance of license

Current through the end of the 2010 Regular Session.

The board may, for good cause shown upon such terms as the board may prescribe, reissue a license to any person whose license has been revoked.

CREDIT(S)

(Act 2001-1057, 4th Sp. Sess., p. 1032, § 14.)

§ 34-2A-15. Violations.

Current through the end of the 2010 Regular Session.

(a) It shall be a misdemeanor for any person to commit any of the following:

(1) Sell or fraudulently obtain or furnish any license or aid or abet in selling or fraudulently obtaining or furnishing any license.

(2) Practice as an assisted living administrator under cover of any license illegally or fraudulently obtained or unlawfully issued.

(3) Practice as an assisted living administrator or use in connection with his or her name any designation tending to imply that he or she is an assisted living administrator unless duly licensed to so practice under this chapter.

(4) Practice as an assisted living administrator or use in connection with his or her name any designation tending to imply that he or she is an assisted living administrator during the time his or her license issued under this chapter shall be expired, suspended, or revoked.

(5) Otherwise violate any of the provisions of this chapter.

(b) A violation of this chapter shall be a Class C misdemeanor punishable as provided by law.

CREDIT(S)

(Act 2001-1057, 4th Sp. Sess., p. 1032, § 15.)

§ 34-2A-16. Construction of chapter. [AL ST SEC 34-2A-16]

Current through the end of the 2010 Regular Session.

Nothing in this chapter shall be construed so as to limit, conflict with, or diminish the authority granted to the State Board of Public Health to license and regulate assisted living facilities pursuant to Chapter 21 of Title 22. The board may not set any requirement, promulgate any rule, or take any action in conflict with the rules of the State Board of Public Health.

CREDIT(S)

(Act 2001-1057, 4th Sp. Sess., p. 1032, § 16.)

Board Members



Amy Findley
Executive Director

State of Alabama Board of Examiners of Assisted Living Administrators

5921 Carmichael Road
Montgomery, Alabama 36117
www.boeala.state.al.us

Telephone: (334) 271-2418
Fax: (334) 271-2420

The following list is the current serving Board members for the Board of Examiners of Assisted Living Administrators.

<u>Board Member</u>	<u>City/State</u>	<u>Term Expiration</u>
Vivian Readus, Assisted Living Administrator Chair	Dothan, AL	4/18/2013
Andy Clements, Assisted Living Administrator	Brierfield, AL	4/18/2013
Sherry Stone, Assisted Living Administrator	Deatsville, AL	4/18/2011
Dale Law, Assisted Living Administrator	Troy, AL	4/18/2011
Rita VanDyke, Assisted Living Administrator	Florence, AL	4/18/2013
Regina Harrell, Physician	Tuscaloosa, AL	4/18/2011
Deloye Burrell, Consumer	Vestavia Hills, AL	4/18/2013
George Smith, Consumer over 65	Vestavia Hills, AL	4/18/2011
Cindy Lewis, Nursing Home Administrator	Cullman, AL	4/18/2013



Amy Findley, Executive Director

3.10.11

Date

RESPONSE TO SIGNIFICANT ISSUES



**State of Alabama Board of Examiners of
Assisted Living Administrators**

5921 Carmichael Road
Montgomery, Alabama 36117
www.bocala.state.al.us

Amy Findley
Executive Director

Telephone: (334) 271-2418
Fax: (334) 271-2420

August 4, 2011

Mr. John Norris
Director, Operational Division
Department of Examiners of Public Accounts
P.O. Box 302251
Montgomery, AL 36130-2251

Dear Mr. Norris:

Listed below are the responses to the findings found during the Sunset Audit by the Department of Examiners of Public Accounts:

Prior Significant Issue 2009-01

The board is charging fees to licensed nursing home administrators (NHA's) and acute care hospital administrators (ACHA's) for which no apparent statutory authority exists.

The *Code of Alabama 1975*, Section 34-2A-11 exempts NHA's and ACHA's from the assisted living licensure requirements, but provides that they may obtain and maintain an assisted living administrator license by paying an administrative fee set by the board (\$75) and annually submitting proof of employment as a NHA or ACHA. The board charges the administrative fee at initial licensure and annually thereafter.

If an NHA or ACHA submits annual proof of employment after the license renewal deadline, the board charges a late renewal fee of \$250, which is the same fee it charges to its regular licensees who are delinquent. For regular licensees, if 90 days or more has elapsed since the renewal deadline and the license has not been renewed, the license lapses, and the licensee is required by law to obtain a new license. The board also applies this provision to the NHA/ACHA licensees. For the NHA or ACHA, obtaining a new license requires only payment of the \$75 administrative fee and proof of employment as an ACHA or NHA. Some of the exempt NHA/ACHA licensees who are delinquent in submitting proof of employment intentionally let their licenses lapse and obtain a new license for \$75 rather than pay the late renewal fee of \$250. To counter this behavior, the board amended its administrative rule 135-X-7-01.6, to include an additional \$150 reapplication fee for the NHA/ACHA licensees.

We consider that the exemption statutes for NHA/ACHA's contain all of the requirements necessary for a licensed NHA or ACHA to obtain and maintain a license as a nursing home administrator. The exemption statutes require only payment of an administrative fee set by the board (\$75) and annual submission of proof of continued employment as a NHA or ACHA. Consequently, we consider any fees other than the \$75 administrative fee to be improper, including the \$150 reapplication fee and the \$250 late renewal fee. It is also not clear that the law authorizes the \$75 administrative fee to be charged at any time other than at initial licensure so long as annual proof of continued employment as a NHA or ACHA is submitted.

Various opinions of the Attorney General and Alabama Supreme Court cases have concluded that state boards and regulatory agencies are precluded from doing things not expressly or impliedly authorized by statute. An often cited principle in the court cases and the opinions is that, "Where a statute enumerates certain things on which it is to operate, the statute must be construed to exclude all things not expressly mentioned." In following this principle, the Alabama Supreme Court and the Attorney General (in opinions) have stated that where the law does not provide specific or implied authority for fees, fees cannot be charged.

The exemption statutes for NHA/ACHA's are found in the *Code of Alabama 1975*, Section 34-2A-11, which provides that: "(b) Any person who has a license in good standing, and continuously maintains such license as a licensed **nursing home administrator**, shall be exempt from the licensure requirement herein if the person at the time of application has responsibility for administration of an assisted living facility subject to the following conditions: (1) If the person wishes to also be issued a license as an assisted living administrator, the person shall pay an administrative fee as determined by the board and document initially and annually thereafter the good standing of the nursing home administrator license."

"(c) Any person who is an **administrator/chief executive officer of an acute care hospital** shall be exempt from the licensure requirement herein if the person at the time of application has responsibility for administration of an assisted living facility subject to the following conditions:

(1) If the person wishes to also be issued a license as an assisted living administrator, the person shall pay an administrative fee as determined by the board and document initially and annually thereafter their continued employment as an administrator/chief executive officer of an acute care hospital."

Current Status - The board has ceased charging the \$150 reapplication fee and the \$250 late renewal fee to nursing home administrators and acute care hospital administrators who wish to also be licensed as assisted living administrators. However, the board's administrative rules continue to list the \$150 reapplication fee, and the reapplication fee continues to be posted on the board's website.

Response: The Board was advised by the auditor not to change anything to the rules since we were trying to get our statute changed to reflect charging the fee. Since we were unsuccessful in getting the statutes changed, necessary action will be taken to remove the fee from the rules and website.

Prior Finding 2010-02

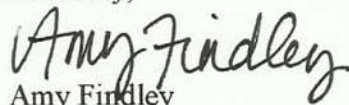
The board by administrative rule created a \$25.00 replacement license fee for which no statutory authority exists. Opinions of the state's attorney general have held that fees not authorized by statute cannot be charged (AGO 87-00222, AGO 2002-193, AGO 80-181, AGO 89-131, and AGO 2009-015).

Current Status - The board is not charging the fee but the fee remains listed in the board's administrative rules.

Response: The Board was advised by the auditor not to change anything to the rules since we were trying to get our statute changed to reflect charging the fee. Since we were unsuccessful in getting the statutes changed, necessary action will be taken to remove the fee from the rules and website.

Please do not hesitate to call me at (334) 271-2418 if you have any questions concerning these responses.

Sincerely,



Amy Findley
Executive Director